IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9307 OF 2005

Vilas Dnyanoba Mahadeshwar .. Petitioner.

V/s.

The Commissioner, Kolhapur Municipal Corporatoin, Kolhapur and others .. Respondents.

Mr. Amit Borkar for the Petitioner.

Mr. S.S.Patwardhan for the Respondent No.1.

Mr.A.H.Palekar, AGP for the State.

CORAM : R.M. SAVANT, J.

DATED : 04th JUNE, 2007.

P.C.:

. Rule. Rule, with the consent of the parties is made returnable forthwith and heard finally.

2. The petition impugns the order dated 06.12.2005 passed by the 5th Adhoc Addl. District Judge, Kolhapur at Exh. 52-D in regular Civil Appeal No. 328 of 2003, by which order the petitioner’s application for amendment vide the said exhibit is rejected. Such of the facts which are necessary to be cited are stated thus :

3. The petitioner has filed a Regular Civil Suit

No. 411 of 1982 in the court of Civil Judge, Sr.Division, Kolhapur for a declaration and permanent injunction against the defendants, not to disturb the possession of the petitioner in respect of the land in question. The said RCS No. 411/1982 came to be dismissed by the Civil Judge, Sr.Division by its judgment and order dated 10th September, 1982. Aggrieved by the said dismissal, the petitioner filed regular civil Appeal No. 328 of 2003. In the said Appeal, the petitioner has moved an application for amendment of the cause title. The amendment sought is to change the name of the original defendant from "Commissioner, Kolhapur Municipal Corporation to Municipal Corporation, Kolhapur through Commissioner".

4. I have heard the learned counsel for the petitioner and the learned counsel for the Respondent No.1. The learned counsel for the petitioner submits that through inadvertence instead of the Kolhapur Municipal Corporation, the Commissioner Municipal Corporation of Kolhapur was arraigned as defendant. He further submitted on behalf that the said flaw is technical and that the petitioner who is the original plaintiff, should not be made to suffer for the same.

5. On the other hand the learned counsel for the

respondent No.1 contends that the Commissioner is a separate entity and the petitioner should have been diligent while arraigning the defendants in the suit. Be that as it may be, times out of number it is seen that when public bodies are joined as party respondents or defendants, the officers are usually joined by designation or name as representing the public bodies as respondents or defendants when in fact the reliefs are claimed against the public bodies and not against the officers. Such a flaw, in my view, is technical, as the petitioner is also intending to prosecute the suit against the Municipal Corporation and not against the Municipal Commissioner.

6. In that view of the matter, the petition would have to be allowed and consequentially the amendment sought vide Exh. 52-D is allowed. The petitioner would carry out necessary amendments in the said suit within three weeks from date. The Appellate Court is directed to dispose of the Appeal No. 328/2003, after such an amendment is carried out, within two months thereafter.

7. Rule is accordingly made absolute in the aforesaid terms with parties to bear their own costs.

(R.M.SAVANT,J.)

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